

Adopted at Meeting of 10/28/76

BOSTON URBAN ASSOCIATES
133 Federal Street
Boston, Massachusetts 02110

September 15, 1976

Boston Redevelopment Authority
City Hall
Boston, Massachusetts 02201

Re: Park Plaza

Gentlemen:

We are aware that, since the March 1974 decision by the Massachusetts Department of Community Affairs (the "Department") approving the Park Plaza Urban Renewal Plan (the "Plan"), the Boston Redevelopment Authority (the "Authority") has undertaken a building mass, use and location study and a related environmental impact report with respect to Stage I (as described in the Plan) of the Park Plaza Urban Renewal Project (the "Project"). We are also aware that the Commonwealth has expressed its intention to acquire and develop a site within this portion of the Park Plaza Urban Renewal Project Area (the "Project Area") for a Department of Transportation Building in which various public agencies and authorities will be located.

In view of the foregoing, you have informed Boston Urban Associates ("Urban") that the Authority wishes to carry out the Plan for the Project but with certain changes in the previously proposed development contemplated under the Plan. In particular, the Authority has expressed its preference that the total development be reduced in overall density and height, that the development by Urban be lessened in size and within a smaller area, and that the new Department of Transportation Building be included in the Project. The Authority's proposed reductions in the overall density,

MEMORANDUM

TABLED: October 7, 1976
TABLED: OCTOBER 21, 1976
RESUBMITTED: OCTOBER 28, 1976

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT T. KENNEY, DIRECTOR

SUBJECT: PARK PLAZA URBAN RENEWAL PROJECT AREA
LETTER OF INTENT

On March 5, 1974, the Department of Community Affairs approved the Park Plaza Urban Renewal Plan subject to completion of a building mass, use and location study, including the study of alternatives and a supplemental environmental impact report.

On January 14, 1976, the Board ratified and affirmed the submission of a supplemental impact report to the Secretary of Environmental Affairs.

On April 5, 1976, the Secretary of Environmental Affairs indicated that "the Draft Environmental Impact Report submitted at the building study phase adequately and properly complies with the General Laws Chapter 30 Section 62 for a draft report" and that the requirement that alternatives be studied was satisfied.

This alternative represented the results of compromises between environmental and financial considerations that were made possible by the State's proposal to construct an office building for the Department of Transportation on Parcel 3 of the Park Plaza Urban Renewal Plan.

As Boston Urban Associates has previously been the designated developer for Parcel 3, and because the reduced density program required certain modifications to the agreements between the developer and the Authority, a new Letter of Intent has been drawn up which restates some of the obligations previously contained in the Letter of Intent and Supplement to the restated Letter of Intent and Supplemental Agreement, and insures that the obligations of both parties are consistent with the development program that has been submitted to the Secretary of Environmental Affairs.

VOTED: That the Boston Redevelopment Authority hereby approves the Letter of Intent and hereby ratifies the action of the Director in executing the Letter of Intent.

height and area of the private development will significantly decrease the role and participation of Urban as the redeveloper. The Authority has, therefore, proposed various modifications of the agreements between the Authority and Urban to recognize and effectuate these changes.

Urban has to the date hereof incurred substantial costs in connection with the Project and has furnished to the Authority a certified statement of such costs totalling in excess of \$1,600,000, which costs may be subject to independent audit. Urban is willing, however, to proceed on the terms herein set forth with the development with certain changes and limitations as proposed by the Authority.

Accordingly, this Letter, setting forth our agreement with respect to the Project, combines and restates Urban's previously restated and supplemented Letter of Intent with such modifications as are now appropriate in view of the changes required by the Authority in the previously proposed development. When this Letter shall have been duly executed by both parties and shall have been approved by all requisite public agencies, and when the Building Study hereinafter described shall have been approved, as hereinafter defined, this Letter shall be deemed to set forth the entire agreement between the Authority and Urban in place of any and all prior agreements which shall have no further effect and under which neither party shall make any claim.

This Letter covers, and Urban's obligations shall be limited to, the portion of the Project Area located west of Charles Street and identified on the plan annexed to this Letter and marked Exhibit I (the "BUA Development Site").

The Authority's right and power to undertake the Project are subject to the approval of the Plan under Chapter 121B of the General Laws, as hereinafter defined for the purposes of this Letter; and Urban's performance hereunder is subject to the Authority's obtaining such approvals within a reasonable time and to the performance by the Authority of its obligations hereunder, including the acquisition and disposition of land to Urban, pursuant to a schedule to be agreed and to be contained in the Land Disposition Agreement hereinafter described (the "Schedule").

The Authority and Urban agree to cooperate with each other to carry out the development contemplated by the Plan and this Letter within the BUA Development Site. The Authority shall use its best efforts to carry out the remaining elements of the Project in accordance with the Plan, including making land within the Project Area in the vicinity of the BUA Development Site available for development in accordance with the Plan for a Department of Transportation Building.

PART I.

INTRODUCTIONS AND DEFINITIONS

Urban has been designated as the redeveloper of the BUA Development Site subject to agreement between Urban and the Authority upon a satisfactory form of land disposition agreement or agreements (herein collectively, the "Land Disposition Agreement") and formal execution, delivery and performance thereof. The development which Urban proposes consists of the following elements:

- (a) building areas intended for use as business offices ("Offices");
- (b) building areas intended for use as retail shopping and service facilities ("Retail");
- (c) a building area intended to be used as a hotel ("Hotel");
- (d) building areas to be used as garages ("Garages");
- (e) building areas to be used as apartments ("Apartments");
and finally
- (f) pedestrian walkways between building areas.

In addition, open areas (the "Open Areas") in and about the BUA Development Site, and a part of the Project proper, retained by the Authority (or the City), shall be developed as a public plaza by the Authority (or the City) incident to and in coordination with Urban's construction of portions of the Project. Such Open Areas, including the public plaza, shall be improved by the Authority (or the City) by amenities such as landscaping, lighting, street furniture, and other items

suitable and appropriate to the Project in accordance with the Plan. After the completion of the public plaza and the improvements thereof, Urban shall assume responsibility for the ordinary maintenance thereof, in consideration for which Urban shall be entitled to construct and use a parking facility under the public plaza or a portion thereof in which event (i) Urban, at its expense, shall design and construct the parking facility with a foundation and columns sufficient to support the public plaza and improvements thereof and (ii) in addition to the surface costs, the Authority, at its expense, shall design and construct the building slab on which the public plaza and improvements will be constructed. The Authority and Urban will coordinate and cooperate in the design of Open Areas so that the public facilities constructed by the Authority (or City) and the private development constructed by Urban will be compatible as to functions and design.

The land within the BUA Development Site will be put to multiple uses. For example, certain of the Apartments will be constructed over retail stores, and certain offices will likewise be constructed over retail stores.

For convenience of reference, land within the BUA Development Site has been redivided, as shown on Exhibit I, into three portions, namely, the land located between Charles Street and Hadassah Way (the "Charles Street/ Hadassah Way Subparcel"), the land located between Arlington Street and Hadassah Way (the "Arlington Street/Hadassah Way Subparcel") and the remaining land located in and around Park Square (the "Park Square Subparcel"). It is intended that the Hotel will be developed either on the Charles Street/Hadassah Way Subparcel or the Park Square Subparcel in accordance with the provisions of the Plan as in effect at the time; and for convenience of reference, the particular Subparcel on which the Hotel is developed is sometimes referred to herein as the "Hotel Subparcel." The actual timing and program of Urban's development will be adjusted, as agreed, by the Authority and Urban, to reflect causes beyond Urban's reasonable control, future delays in public approvals and undertakings of the Project, the availability of land for the various stages of development, and other factors. The term "causes beyond Urban's reasonable control", as used in this Letter, shall not include interest rate levels or market conditions or Urban's inability to obtain financing, but if national fiscal policy or governmental restrictions as manifested, for example, by official operations

by the Federal Reserve Bank of the United States, eliminate available credit on feasible terms for large-scale development, Urban shall be entitled to extensions of time by reason thereof up to twelve months based upon the revised time schedule. References hereinafter to any stage (which shall be more particularly described in the Land Disposition Agreement and which is hereinafter referred to as a "Stage") of the development described therein or to the timing of any Stage shall be deemed to include such agreed adjustments.

The designation of Subparcels within the BUA Development Site, and the division lines among such Subparcels, are diagrammatic only, and are not intended to indicate with precision property boundary lines, since the determination of such boundary lines cannot usefully be made until plans have reached a more definitive stage.

The Authority shall, incident to the development of the Project, be responsible for performing or causing to be performed (with State, City or other funds) site work such as the rebuilding and resurfacing of existing streets and the construction of new streets in and adjacent to the BUA Development Site, including the relocation of public ways, easements and utilities and the installation, alteration or improvement of street lighting; high-service water systems; low-service water systems; high pressure fire systems; surface drainage systems; sanitary sewer systems; traffic control systems; street, traffic and directional signs; and police signal and fire alarm systems. Without limitation to or of the foregoing, the Authority shall be responsible for the costs of all public facilities, whether or not located on the BUA Development Site, including streets and ways, the public plaza hereinbefore described, utilities, and items related thereto, such as public land, engineering, construction and legal costs.

PART II.

FIRST PHASE ACTIVITIES

Section 2.1. Building Study and Schematic Design

A building mass, use and location study (the "Building Study") and a supplemental environmental impact report related thereto has been prepared as a public responsibility

by the Authority and has been submitted to the Department and to the Secretary of Environmental Affairs, together with a certification by the Director of the Authority (the "Director") that the work program for the Building Study and supplemental environmental impact report has been carried out in accordance with its terms in all material respects and with the Letter of Intent. It is understood that the Secretary shall review such Building Study and supplemental environmental impact report related thereto and issue a written statement indicating whether or not such report adequately and properly complies with the provisions of Section 62 of Chapter 30 of the Massachusetts General Laws. It is further understood that the Department will then make a further environmental finding as to whether all feasible measures have been taken to avoid or minimize environmental impact, which will include a review with the Secretary of Environmental Affairs and will incorporate therein the comments by the Secretary of Environmental Affairs.

Promptly after approval, as hereinafter defined, of the Building Study, Urban shall commence the preparation, in conformity with such approved Building Study, of the Schematic Design for the Hotel Subparcel in accordance with Stage I of the standard Authority review process known as "Schematic Design."

The Schematic Design for the Hotel Subparcel and for the remainder of the BUA Development Site and the construction of the improvements thereon shall also be in conformity with the applicable controls set forth in Exhibit II attached hereto. The Authority shall take such actions, including modification of the Plan, and obtain such approvals, if any, as may be required so that construction in conformity with such controls shall not be in violation of the Plan.

As soon as the Schematic Design for the Hotel Subparcel is available, Urban shall submit the same for the review and comment of the Director and, upon reaching an accord thereon, the Authority's approval thereof. Urban will submit such Schematic Design to the Authority not later than six (6) months following approval, as hereinafter defined, of the Building Study, except as this period may be adjusted due to a delay in the execution of a Master Land Disposition Agreement (as hereinafter defined).

Promptly following approval of the Building Study, the

Authority and Urban shall commence preparation of the Land Disposition Agreement and shall duly and diligently complete and execute the same. It is expected that Urban and the Authority will execute the Master Land Disposition Agreement within four (4) months following such approval of the Building Study; but if the time required for execution is delayed beyond four (4) months, then the time within which submission of such Schematic Design is due shall be postponed by the amount of time beyond four (4) months required for the execution of the Master Land Disposition Agreement.

Urban intends to retain, as the principal consulting architect (the "Architect") for its development of the BUA Development Site, the firm of Davis, Brody & Associates, of New York City. The Architect shall initially be responsible for the preparation of Schematic Design of Urban's development. Urban also intends, however, to retain the services of other architects to work in association with the Architect for various elements of its development. No substitution of another principal architect may be made without the consent of the Authority, which consent shall not be unreasonably withheld.

The Authority shall promptly after approval of the Building Study initiate preliminary engineering services and other activities involved in the relocation and reconstruction of New Charles Street in order not to delay the performance of early development phases.

Section 2.2. Approval of the Plan and the Building Study and Rezoning

The Authority shall use its best efforts to secure approval, as herein defined, of the Building Study.

Approval of the Plan under Chapter 121B of the General Laws and approval of the Building Study, for all purposes of this Letter, shall each include, as a part of the same, further favorable findings by the Department and the Secretary of Environmental Affairs to the extent required by the March 1974 decision of the Department or by law as hereinbefore mentioned, favorable actions and approvals to the extent required with respect to the controls referred to in Section 2.1 hereof, the favorable termination of any judicial review proceedings that might materially affect the carrying out of the Project, or any part thereof, other favorable court

decisions with respect to the Project to the extent such decisions reasonably appear to the Authority or Urban to be necessary, and authorization for the acquisition of land for, and the construction and financing of, the BRA Site Work and the Department of Transportation Building.

As soon as practicable after approval of the Building Study, the Director shall initiate the steps requisite to any necessary or appropriate rezoning of the Project Area or at least that portion thereof as is located west of Charles Street. Such steps shall include, but without limitation, the scheduling of necessary public hearings and preparation of appropriate documents, all to the end that the Authority shall have made all necessary recommendations to the appropriate City authority to place the Project Area, or such portion, in a so-called planned development area, as that term is defined in the Zoning Ordinance for the City of Boston, with zoning controls consistent with this Letter, the Plan, and the Land Disposition Agreement. Nothing in this Section 2.2 shall obligate the City to effect the required zoning changes.

All such hearings and materials shall have been held and completed in sufficient time in advance of the estimated date when land acquisition for each Stage is to take place so that it will be feasible simultaneously with the Authority's acquisition of land for one Stage to cause (by the action of the appropriate City authority) acquired land to be rezoned. It is understood that Urban will not be required to go forward with land acquisition for any Stage unless the rezoning is accomplished not later than or concurrently with such acquisition (or there are absolute assurances that such rezoning will be accomplished), and the Authority agrees to use its best efforts to secure necessary rezoning action, all as aforesaid.

Since it is contemplated that acquisition of parts of the Project Area will occur at different times, necessary zoning action will be phased accordingly, so that the same is taken, with respect to each acquired portion, separately and only after acquisition occurs.

Section 2.3. Subsequent Action by the Authority in Respect of Project Design

Not later than fifteen (15) working days after submission of the Schematic Design for Urban's development of the Hotel

Subparcel, the Director shall on behalf of the Authority either approve such Schematic Design or notify Urban in writing of the specific respects in which it finds such Schematic Design to be unacceptable, it being understood that, if such Schematic Design is in conformity with the approved Building Study, the controls set forth in Exhibit II, the objectives of the Plan, and the provisions of this Letter, approval of such Schematic Design will not be withheld.

If the Director does not so notify Urban within said fifteen-day period after submission of such Schematic Design of specific respects in which the same is unacceptable, the Schematic Design as submitted shall be treated as having been approved by the Authority. In respect to any specific matters in the Schematic Design which are unacceptable according to such notice, Urban shall, within fifteen (15) working days (or such additional time as may be reasonably required in the circumstances) after Urban receives written notice, resubmit such Schematic Design, altered in an effort to remove the basis for disapproval. All resubmissions and subsequent approvals or disapprovals thereof shall be made and given in accordance with the procedure hereinabove provided for the original submission, until such Schematic Design shall be approved, or shall be treated as having been approved, by the Authority as set forth above. The preceding sentences shall govern the procedure applicable to resubmissions of later stages of the various design documents as well as submissions and resubmissions of designs and plans for other Stages of Urban's development. Subject to the foregoing, the "Standard BRA Design Review" procedures, including review by the DAC, shall govern and be applicable to resubmissions of later stages of the various design documents, except that the preliminary working drawings and outline specification stage shall be omitted. In connection with the foregoing, however, the parties contemplate that submission of design material and review of the same will be a continuous process, with the parties duly and diligently completing the same and working cooperatively in respect of all Project design matters. As work proceeds, Urban shall furnish progress prints of drawings, to assist in the efficient conduct of the review process.

Section 2.4. Subsequent Design Materials

Subsequent design materials for the Hotel Subparcel

shall be furnished in accordance with the following schedule:

- (a) Design development drawings (in which the various elements shall be identified and integrated, massing shall be shown, and preliminary functioning elements shall be laid out, together with outline specifications therefor, which shall include designations of materials proposed to be used) shall be submitted to the Authority not later than five (5) months after approval of the Schematic Design; and
- (b) Working drawings and specifications, defined to include detail relative to exterior treatment of the various building elements and exterior amenities, specifications for materials, and details relative to methods of construction, site work, streets, elevations and sections, pedestrian and vehicular passage, and public pedestrian levels in interior building spaces, in sufficiently completed form that the same may be utilized for the construction contract working drawings and specifications, shall be submitted not later than five (5) months after approval by the Authority of design development drawings.

The Director may not unreasonably withhold approval of design materials submitted subsequent to the Schematic Design which are consistent with and elaborations of previously approved materials. Materials for the other Stages of Urban's development of a quality at least equal to the Schematic Design for the Hotel Subparcel shall be furnished to the Authority for its approval in like sequence; and approvals or disapprovals of the same, and the time periods within which the same are to be given, shall be governed by the procedure established in Section 2.3.

It is understood that the Authority will designate a Design and Construction Phase Review Team, including a representative of Urban, which will act only in an advisory role to advise the Authority with respect to Project construction activities. It is understood, however, that after working drawings and specifications shall have been approved, Urban shall be entitled to proceed with construction in accordance therewith, subject only to further approvals by the Authority with respect to changes, if any, proposed by Urban affecting land use, the building design or facade, the areas around the building and the relationship of the first floor internal uses to external areas.

PART III

ECONOMIC FEASIBILITY

Not later than six (6) months after the Authority shall have approved the Schematic Design for Urban's development of the Hotel Subparcel, Urban shall submit to the Director evidence reasonably satisfactory to the Director of the availability and commitment of financing for such development. The commitment for financing shall be in a form such that land acquisition for such Subparcel can commence within two (2) months after its receipt. However, it is understood that, until possession of the property is assured by the eviction of all occupants, and the City has provided satisfactory assurances as to the timing and completion of utilities' relocation, thereby making more certain the actual construction date, the availability of financing for construction (as distinguished from the commitment relative to financing of land acquisition, which shall be firm before land acquisition commences) will not be in the form typical of final letters of commitment, but such evidence of availability and commitment satisfactory to the Director shall be submitted within sixty (60) days of such complete possession.

The Authority agrees to use its best efforts to complete property value appraisals (by qualified outside appraisers having at least ten years' experience) of property within such Subparcel, and such additional areas directly related thereto as to which Urban shall advise the Authority that appraisal work is reasonably needed in order to prepare its financing plans and including City-owned parcels directly related thereto and to be acquired by the Authority, within two (2) months after approval of the Building Study as herein defined. In any event, Urban shall not be required to submit any Schematic Design or evidence of availability of financing until two (2) months after such property value appraisal work is substantially completed. Like evidence of financing plans for other Subparcels within the BUA Development Site shall be furnished by Urban to the Authority no later than four (4) months before proposed commencement of land acquisition of each such other Subparcel.

If requested by the Department, appraisal data will be furnished to the Department, to be held confidential until all of the land within the BUA Development Site shall have been acquired and the owners paid, except as otherwise required by law.

The Authority shall bear and be responsible for all of its administrative, staff, legal and overhead costs; and Urban shall be responsible for payment to the Authority of only such costs as Urban expressly assumes herein. The costs of legal fees and expenses of outside counsel retained by the Authority in connection with any litigation with respect to the legality of either the Project or the undertaking of the proposed development as herein provided shall (except as provided in Section 4.5) be paid as follows: up to \$75,000 by the Authority; and any excess up to the next \$75,000 equally by the Authority and Urban.

PART IV.

LAND DISPOSITION AGREEMENT

Section 4.1. Scheduling of Land Acquisition

In recognition of the fact that separate financing may be appropriate for the various stages of the Project, and because it may be necessary to assure the various financing institutions which will be involved in providing financing therefor of independent security for financing so provided, the Authority shall, on the request of Urban, cause the BUA Development Site to be divided into areas according to the agreed-upon Stages of development thereof, and shall agree to separate land sales or leases with Urban for each of such separate areas. Such separation may occur after the execution of a "master" Land Disposition Agreement for the entire BUA Development Site, and the execution by Urban of such a master Land Disposition Agreement shall not preclude subsequent separation as may be mutually determined. References herein to the Land Disposition Agreement shall mean the master Land Disposition Agreement or individual Land Disposition Agreements, as the case may be.

In all events, the rights of the Authority with reference to each Stage of the development, and the obligations of Urban in respect to the same, shall be separate, so that any claim of default with reference to any one such Stage shall not give rise to any claim of default with reference to any other Stage of development; provided, however, that, should Urban be determined to be in default in any Stage of the development in accordance with the terms or conditions of applicable agreements between the parties respecting said Stage, Urban shall forfeit the right to commence work on any other Stage.

Section 4.2 Financing of Acquisition and Other Costs

Urban has advised the Authority that it is considering the feasibility of effecting financing of land acquisition costs, relocation costs, and demolition costs, if any, within the BUA Development Site by the use of bond issues (the "Bond Issue") in the name of the Authority, in suitable principal amounts, the proceeds of such bond issue to be limited to the financing of residential and parking facilities and ancillary uses, as more fully described in Section 5.1 hereof.

The Authority shall not be required to commence the acquisition of land for any Stage of Urban's development until the Authority is provided with evidence reasonably satisfactory to the Authority that the total estimated acquisition, relocation and demolition costs, where appropriate, for said Stage shall be available to the Authority; for example, if a national bank shall provide a commitment to make available, for such purposes, an amount equal to such estimated costs, the same shall be satisfactory assurance.

Section 4.3 Transfer to Urban

The Land Disposition Agreement shall provide for the assumption by Urban of the net carrying costs (after credit for income received or due) on land to be developed by Urban and acquired by the Authority in accordance with the Schedule, from and after such acquisition, provided that the Authority shall duly and diligently perform each of the following undertakings: The Authority shall:

- (a) if requested by Urban, defend any action brought challenging the Plan, or the validity of the adoption thereof, taking all reasonable steps necessary to expedite early and final disposition of any such claims; it being understood that the Plan shall not be deemed to be approved for the purposes of this Letter until the final disposition of such claims and that such claims shall not include petitions for the assessment of damages on account of eminent domain takings;
- (b) agree with Urban upon, and exercise its best efforts to carry out, a land acquisition and occupant relocation program consistent with the schedule of development contemplated herein for

the BUA Development Site and to the end that land acquisition shall be simultaneous with Urban's furnishing of acquisition financing and that any further period prior to disposition of the land to Urban for development shall be made promptly in accordance with such schedule;

- (c) carry out a suitable relocation program for all persons to be displaced after acquisition, and work with all relocatees well in advance of the actual date of acquisition, to the end that possession of the land, free of all occupants, can be delivered to Urban at the earliest possible date after acquisition; and
- (d) exercise best efforts, including the diligent commencement and prosecution of legal proceedings and the exercise of other legally available remedies, to obtain possession of land clear of all occupants promptly and in the time contemplated by the program and development schedule, subject only to interference by causes beyond the Authority's legal control; it being understood that no occupant will be required to move until proper and required relocation services have been offered as provided in the Authority's Relocation Plan, and it being further understood that the Authority will offer and furnish such services promptly and diligently in the light of such objective.

Carrying costs shall include payments to be made by the Authority to the City in lieu of taxes for property which becomes exempt from taxation by reason of the Authority's ownership (which payments shall be equal to the amounts which would have been payable, in the aggregate, as real estate taxes if the property had not then been so exempt), shall include relocation payments to occupants (except for portions provided by the City as hereinafter stated or previously provided by Urban as a part of the Disposition Price (as hereinafter defined), and shall include interest at the legal rate on amounts paid, advanced or guaranteed by Urban for the Authority's acquisition of such properties and for such relocation payments.

The Land Disposition Agreement shall provide a description and plan of the land within the BUA Development Site to be

acquired by Urban and shall also provide for the purchase, or in each instance at Urban's option the lease, by Urban from the Authority of properties within each Stage acquired by the Authority, in accordance with the Schedule.

The Land Disposition Agreement shall provide, in a fashion satisfactory to the Authority:

- (a) that Urban and the Authority shall each waive any so-called third-party beneficiary defense to an action brought by the City to enforce any provision in such agreement;
- (b) that Urban will diligently prosecute to completion each successive phase of its development consistent with the Schedule, subject to causes beyond Urban's reasonable control;
- (c) that if Urban shall fail to perform in accordance with any of its obligations under the Land Disposition Agreement and shall, upon the Authority's demand, fail to take action to remedy its nonperformance,
 - (i) any Subparcel to which such failure to perform relates shall revert to the Authority, subject, however, to the rights of any mortgagee to proceed to perform Urban's obligations and avoid reversion or to preserve the mortgage lien as a prior claim on land which may so revert, and subject further to Urban's right to the net remaining value of any such Subparcel after the realization by the Authority therefrom of allocable costs and damages; (ii) that part of the Deposit at the time made by Urban and applicable to such Land Disposition Agreement as shall be ascertained to be the actual damages of the Authority shall be retained by the Authority and (iii) except as aforesaid, the Authority shall rescind Urban's designation as redeveloper of any Subparcel to which such failure to perform relates;
- (d) that if the Authority shall issue bonds in order to assist in the financing of any part of the Project, neither the City nor the Authority shall have general liability to pay the indebtedness evidenced by the bonds, or any of them, under any circumstances; and
- (e) that Urban shall require as to any parking facility

operated within the Project that the rates charged to daily commuters who live and work outside the Project shall be, on an hourly basis, at least double the rates charged to persons parking there for four hours or less.

The Land Disposition Agreement shall also provide that Urban shall undertake to carry out the development of the following elements by establishing a Chapter 121A limited dividend entity or entities (which may be a corporation, partnership, or other entity permitted under Chapter 121A) and by applying to the Authority for approval thereof:

- (a) the hotel
- (b) the office tower
- (c) the principal department store retail space
- (d) the parking garage
- (e) the residential units

It is recognized that the orderly carrying out of the development may be substantially and adversely affected by delays in determinations and approvals as to the Chapter 121A development entity and organization. Accordingly, if a final determination as to the approval of the Chapter 121A application (including the expiration of any period for judicial review or the conclusion of such review) and the execution of a related Chapter 121A contract with the City (which contract will be a public document available for public scrutiny) have not been achieved within six (6) months after the filing of such application, Urban shall be entitled (upon notice thereof to the Authority) to proceed with the redevelopment of such elements without reference to such Chapter 121A proposal but shall complete the development pursuant to the Chapter 121A proposal if and when a favorable determination as to its legality and the execution of such contract are subsequently achieved, provided such completion pursuant to Chapter 121A is legally feasible. Urban shall use its best efforts to achieve such favorable determination at the earliest possible time. Nothing herein shall be deemed to be a waiver of any of the rights of the Authority under Chapter 121A.

It is also recognized that Urban's ability and willingness to have the development of the Hotel carried out by a limited dividend entity under Chapter 121A is dependent upon the present Federal income tax laws relating to real estate tax shelter remaining substantially as at present.

The disposition price (the "Disposition Price") to

Urban of land within the BUA Development Site to be acquired by Urban shall be a pro rata share of the total cost to the Authority of the parcels constituting, in whole or in part, such land (including acquisition appraisal, acquisition, relocation and demolition costs), such share bearing the same ratio to such total cost as the land area to be covered by Urban's building on such land bears to the land area of all said parcels, except that, to the extent that the perimeter of the building shall include arcade space, Urban shall not be responsible for the portion of the land cost attributable to the area of the arcade space, but only for the portion attributable to the air rights thereon, if any, actually used by the building. At the time of the acquisition by the Authority of any such parcel of land within the BUA Development Site, Urban shall cause the Disposition Price to be made available to the Authority, whether through the proceeds of the Bond Issue (as hereafter defined) or otherwise.

As to land (including streets) in the BUA Development Site now owned by the City and to be conveyed to Urban for development, the same shall be conveyed to Urban on the basis of appraisals of the land at fair market value, fair market value being defined as determined with reference to zoning, and without regard to increments in value which are attributable to the approval or carrying out of the Project or to combination of such parcels with other parcels, i.e., valuing the land as individual, unassembled pieces, and based on similar appraisals for the valuation of similar City land (including streets).

For the areas Urban elects to purchase, with the acquisition price to be financed by the Bond Issue (as hereinafter described) as hereinbefore mentioned, the Land Disposition Agreement shall provide that the purchase price shall be equal to the principal amount (which shall include, without limitation, the aggregate amount of all of the items constituting the Disposition Price) of the Bond Issue allocable thereto, together with accrued interest thereon. Payment for purchased property shall be made by conveyance thereof as aforesaid subject to the obligations imposed on the properties transferred by the terms of the Bond Issue.

For the areas which Urban elects to lease from the Authority, the Authority shall enter into a completely net ground lease (the "Lease") with Urban, for a maximum term of

two years, containing, but not limited to, the following terms and provisions:

- (a) annual rent shall include an amount equal to interest and sinking fund payments due on the Bond Issue and any net carrying costs not paid, assumed or borne directly by Urban as herein provided;
- (b) Urban shall be entirely responsible for the payment of real estate taxes assessed against the property and for payments in lieu of taxes on account of property which may be exempt from taxation by reason of the Authority's ownership, in amounts determined by the City, equal to the amount which would have been payable, in the aggregate, as real estate taxes if the property were not exempt from taxation and fee title thereto were held by Urban;
- (c) any income earned by the Authority from properties covered by the Lease shall, after deducting reasonable expenses fairly allocable thereto (but not any amounts determined by reference to the Authority's staff expenses, except property management fees), be treated as a credit to rent under the Lease. Such income is herein referred to as the "Credits;"
- (d) the term of the Lease shall expire on the date when any applicable Bond Issue matures and all the unpaid principal thereof is due and payable. At that time, the Authority shall sell and Urban shall purchase the fee in the land covered by the Lease for a disposition price equal to the then outstanding unpaid principal and interest on the Bond Issue, after taking account of amounts available for payment against principal from the sinking fund and Credits, if any, not theretofore applied against rent; and
- (e) at any time during the term of the Lease, Urban shall have the right to acquire the fee to the land covered by the Lease at a disposition price equal to an amount determined in accordance with subparagraph (d) immediately above with appropriate adjustments such as those referenced in subparagraphs (a), (b) and (c).

Where Urban purchases portions of the BUA Development Site and leases other portions, separate bond issues, or separate series of the same bond issue, will be utilized for the financing of each portion, such separate issues or series being allocated in their entirety to a purchase portion and a leased portion.

In any case where payments are to be made in lieu of taxes, with reference to property exempt from taxation, the amount thereof per year shall in no event exceed the amount which would have been payable as real estate taxes if the property were not exempt from taxation. However, where payments to be made in lieu of taxes are not fixed by statute, Urban shall participate in all negotiations the Authority may have with the City relative to the amount to be paid in lieu of taxes, and settlement of such amounts shall be made only with Urban's approval. Nothing in this Section shall bind the City to accept an amount therefor which may have been agreed upon by Urban and the Authority.

The Land Disposition Agreement shall further provide that, in the event that the Motor Mart Garage located within the Project Area shall be acquired by the Authority or any other public agency, not less than seven hundred fifty (750) designated parking spaces within said Garage shall be leased or otherwise made available for occupants and other users of the BUA Development Site on reasonable terms and conditions mutually acceptable to Urban and the Authority; provided, however, that if Urban shall provide parking through other means, the seven hundred fifty (750) minimum number shall be reduced accordingly. Urban shall also be entitled, at its option and at its expense, to cause the Authority to acquire the Motor Mart Garage and to transfer the same to Urban, in which event Urban agrees to make available to the public at commercial rates not less than three hundred (300) parking spaces within said Garage for evening theatre parking purposes.

Section 4.4 Private Acquisition; Cooperation in Eminent Domain Proceedings

Although it is contemplated that properties will be acquired by the exercise of the Authority's power to take by eminent domain, the Authority understands that Urban will negotiate with individual owners of individual parcels before any eminent domain action is instituted and, in some instances, after a taking. In the case of any settlement of

an eminent domain proceeding which Urban negotiates after a taking by eminent domain, the Authority agrees to join in any reasonable settlement thereof, provided the Authority receives suitable assurances that the cost thereof shall be financed by Urban or will be satisfactorily funded by the Bond Issue.

In the case of individual parcels acquired by Urban by private negotiations, the Authority agrees, on Urban's request, to take the same by eminent domain, notwithstanding Urban's ownership of the same, and to make an eminent domain award on account thereof equal to Urban's cost of acquisition thereof, provided said cost is the result of a reasonable settlement. Urban agrees, however, that, in the case of such individual parcels acquired by Urban by private negotiations, Urban shall remain responsible for the payments to non-owner individual occupants in the properties so acquired for the same relocation payments for which Urban would have been responsible had the property been taken by eminent domain.

Incident to the exercise of the Authority's power to take by eminent domain, the Authority shall consult with Urban relative to the method by which all appraisals for acquisition are to be made, and the appraisers selected to perform the appraisals in preparation for the exercise of such power, and no offer shall be made by the Authority to the owner of any property within the BUA Development Site as to the terms and conditions of any voluntary sale or settlement of any eminent domain proceeding without the prior approval of Urban. In accordance with the Authority's customary real estate acquisition procedures, it is intended that two independent appraisals be made prior to acquisition. The Authority shall consult with Urban in the selection of appraisers and counsel representing the Authority in the eminent domain proceedings. The foregoing will in no way affect the rights of existing property owners to receive the full and fair cash value for their property according to customary acquisition appraisal procedures as used in Federally-sponsored urban renewal projects. It is simply intended to provide Urban with the opportunity to assure itself that the appraisals, on the basis of which it will be asked to provide acquisition funds, are provided by competent appraisers on a consistent, complete and equitable basis.

It is hereby further agreed by the Authority and Urban that (subject always to the property owner's option to make

his own settlement outside the appraisal process if he so desires) in the event that the higher appraisal of any parcel is not greater than 150% of the lower appraisal, the minimum compensation to be paid for the acquisition of such parcel shall be the average of such two appraisals. In the event that the higher appraisal is greater than 150% of the other appraisal, a third independent appraisal of the acquisition value of the parcel shall be obtained; and if the first appraisal is higher than the second, the minimum compensation shall be the average of the three appraisals; but if the first appraisal is lower than the second, the minimum compensation shall be the average of the second and third appraisals.

Section 4.5. Court Award

Urban recognizes that, in the event of an eminent domain taking, the Authority may, due to a court award, be required to pay a larger amount for land acquisition than was paid by the Authority in the initial damage award. To provide for this contingency, the Land Disposition Agreement shall provide that, in the event the Authority is required to pay such larger amount, Urban shall pay to the Authority, upon demand, an amount which shall be sufficient to reimburse the Authority for such additional amount, together with interest thereon and any court costs or attorneys' fees related thereto, and Urban shall, if requested by the Authority in writing, provide the Authority with adequate security to satisfy its obligations hereunder. If the Authority makes a payment in accordance with the preceding portion of this paragraph, and Urban does not forthwith reimburse the Authority therefor, then Urban will pay interest at the legal rate on any such delinquency.

The amount of security from time to time that the Authority may require relative to performance of Urban's obligations shall not exceed, in the aggregate, thirty per cent (30%) of the approved prices made in eminent domain proceedings on properties, the awards for which are at the time in dispute, and the form of such security may be an unconditional irrevocable Letter of Credit in the form and from a bank acceptable to the Authority. The amount of said security shall in no way limit the obligation of Urban to pay the total and final award of land acquisition costs.

Section 4.6. Commencement of Construction

Subject to approval of the Building Study and receipt

of necessary design approvals as herein provided, Urban shall commence construction:

- (a) on the Hotel Subparcel within four (4) months after demolition of the improvements thereon and clearance thereof and the conveyance of such Subparcel to Urban;
- (b) on the Arlington/Hadassah Subparcel within five (5) years after the commencement or two (2) years after the completion of the construction by Urban on the Hotel Subparcel, whichever occurs first; and
- (c) on the remaining Subparcel within six (6) years after the commencement or three (3) years after the completion of the construction by Urban on the Hotel Subparcel, whichever occurs first.

PART V

BOND ISSUE

Section 5.1. Acquisition or Development Bonds

Urban has advised the Authority that it is considering the feasibility of effecting financing of improvements to land within the BUA Development Site, as well as land acquisition, by the use of bond issues (the "Bond Issue") in the name of the Authority, in suitable principal amounts, the proceeds of such bond issue to be limited to the financing of residential and parking facilities and ancillary uses.

Any such Bond Issues shall contain provisions to the effect that the holders of the Bonds will look only to the properties, the acquisition or development of which is to be financed by such Bond Issues, and not to the general credit of the Authority, or the City which shall have no obligation to pay the indebtedness evidenced thereby.

The Authority agrees to cooperate (but without out-of-pocket expense to the Authority) with Urban in Urban's consideration of such financing route and the Authority agrees to utilize such a financing vehicle to assist Urban in its financing of acquisition or development within the BUA Development Site from time to time, provided that Urban

furnishes assurances reasonably satisfactory to the Authority that Urban has arranged for the marketing of the same and that the prospective lender or investment banking house responsible for such marketing is satisfied with the legality of the Bond Issue on the basis of the opinion of counsel to such lender or investment banker, which opinion shall be submitted to the Authority. The opinion of a recognized bond counsel as to the legality of this financing which is acceptable to such prospective lender or investment banking house, upon which opinion the prospective lender or investment banking house commits to rely in proceeding to close the proposed financing, shall constitute assurances reasonably satisfactory to the Authority.

PART VI

MISCELLANEOUS

Section 6.1. Preference in Leasing of Space

Urban agrees, to the extent practicable, to give preference to former occupants of space in the Project Area in the leasing of space in the BUA Development Site. First preference shall be given to former occupants theretofore displaced incident to acquisition of properties by the Authority; and second preference shall be given to then present occupants of properties remaining in the Project Area not yet acquired by the Authority or in buildings in areas where demolition has not yet taken place.

The obligation of Urban to give preference shall not be construed as imposing upon Urban any legal obligation to accept as a tenant of space a person, firm or corporation which it considers, in good faith, to be an unacceptable tenant by reason of credit, reputation or other relevant consideration, such as the use to which such tenant proposes to put space which might otherwise be made available to such tenant. Likewise, such obligation to give preference shall not be treated as imposing a legal obligation upon Urban to accept a tenant, the credit and reputation of which, or the amount which such tenant is prepared to pay for space which might otherwise be made available to it, is of lesser quality or lesser amount than that of another proposed user which wishes to make use of such space.

Section 6.2. Relocation

Urban recognizes that it is the Authority's policy to make payments in accordance with the highest Federal payments available to residents and businesses being relocated in urban renewal projects which are in effect at the time of relocation, but in no case will such payments be less than the Federal relocation payments to residents and businesses in effect on the date the Plan was approved by the City Council.

Urban will, with respect to properties acquired by Urban within the BUA Development Site, provide such funds as are required to defray the costs established by Federal relocation rules prevailing at the time the Authority first sought bids for the Project, plus 50% of any sums in addition thereto resulting from payment of benefits under Federal regulations in effect when such relocation occurs. The City will provide the other 50% of such additional sums. Unless otherwise required by State law or regulations, the procedures and timetables for business and family relocation required by the Federal government shall govern. The parties recognize that the State rules and regulations promulgated under Chapter 79A of the General Laws apply to the Project and that the rules and regulations governing State-aided urban renewal projects do not apply.

The Land Disposition Agreement shall provide that Urban shall employ the Authority to relocate all tenants within the BUA Development Site and shall advance and provide operating capital to the Authority for business and residential relocation costs which are to be reimbursable in accordance with the standards referred to in the preceding paragraph.

Section 6.3. Assignment

Urban intends to cause to be formed a Joint Venture in which the two individuals signing this Letter on behalf of Urban, namely, Zuckerman and Linde, or Zuckerman alone, will be the managing Joint Venturers or managing Joint Venturer, and Urban intends that the Land Disposition Agreement will be entered into by such Joint Venture, as the redeveloper in lieu of Urban. If Urban's intentions in this respect are carried out, and a Joint Venture is formed for purposes of acting as the redeveloper, the Authority agrees to recognize such Joint Venture as Urban's successor, provided that it is satisfied that the managing Joint Venturers or Joint Venturer are, in fact, Zuckerman and Linde, or Zuckerman alone.

Prior to acquisition, Urban, however, agrees to notify the Authority of the identity of any person which proposes to acquire a beneficial interest in the Joint Venture. The Authority, at any time within fifteen (15) days after receiving notice of the identity of such person, shall have the right to notify Urban that it objects to the admission of such person in the Joint Venture if the Authority shall, in such notice, specify reasonable grounds for such objection. If such notice shall be given by the Authority, such person shall not be admitted to such an interest in the Joint Venture without the consent of the Authority, but the Authority agrees to consult further with Urban, if Urban continues to desire to admit such person to the Joint Venture, and not unreasonably to withhold consent to such admission.

Section 6.4. Changes in the Plan

Urban's approval will be required only with respect to modifications or amendments of the Plan applicable to parcels which have been conveyed to or financed by Urban, or its permitted successor, or other parcels within the BUA Development Site as to which Urban's designation as the redeveloper as contemplated herein has not been rescinded by reason of Urban's default.

Section 6.5. Additional Payment to the Authority

In addition to all other amounts to be paid by Urban on account of acquisition of land within the BUA Development Site, Urban further agrees to pay to the Authority the following amounts:

- (a) \$50,000 upon completion of Urban's development of the Charles Street/Hadassah Way Subparcel, and \$50,000 upon completion of Urban's development of the Arlington Street/Hadassah Way Subparcel, such amounts to be used and applied for the improvement and beautification of the Boston Public Garden; and
- (b) Annually for a period of twenty (20) years commencing upon the first to occur of the completion of the payments under the preceding subparagraph (a) or the expiration of thirteen (13) years after Urban's commencement of construction on the BUA Development Site, \$12,000 for each Subparcel on which development by Urban is commenced.

The obligation on the part of Urban to make such payments shall be an obligation as to which recourse may be had only against the Subparcel to which such payment relates, and shall be subject to the availability of funds to make such payments after all operating costs, debt service or other payments to outside lenders and to investors, other than Urban, have been made, but before any return to Urban on its investment, it being understood that a more detailed subordination agreement will be developed in the Land Disposition Agreement.

Section 6.6. Deposit and Other Security

Urban has deposited with the Authority the sum of \$100,000 (the "Deposit"). Any interest accruing on the Deposit, or other sums delivered to the Authority hereunder, shall inure to the benefit of Urban and periodically be paid by the Authority to Urban.

When (i) the Land Disposition Agreement for the BUA Development Site has been executed by the Authority and Urban, (ii) the Schematic Design for the Hotel Subparcel has been approved by the Authority, and (iii) Chapter 121A determinations and approvals have been favorably obtained and are legally effective and the related Chapter 121A contract with the City has been duly executed, with respect to all appropriate elements to be developed on said Subparcel under Chapter 121A in accordance with this Letter, Urban shall deliver to the Authority a Letter or Letters of Credit in the total sum of \$400,000 (to be added to and be part of the Deposit then held by the Authority). The Deposit shall secure the acquisition by Urban of the Hotel Subparcel, and \$450,000 thereof may be applied by Urban toward the purchase price of such Subparcel. The balance thereof may be applied toward the purchase price of the Arlington Street/Hadassah Way Subparcel.

Any Letter of Credit delivered under this Section shall be in a form, on conditions and from a bank acceptable to the Director.

Section 6.7. Default by Urban

In the event of a default by Urban hereunder, the Authority may retain the Deposit as hereinafter provided and rescind Urban's designation as redeveloper of the BUA Development Site. Any such default and rescission shall be

subject to review by a court of competent jurisdiction, which shall ascertain the actual damages suffered, if any, and the rights of the parties. In such event, the Authority shall retain only that part of the Deposit at the time made by Urban as shall have been ascertained to be the actual damages. The foregoing shall be the Authority's sole remedy for any such default and Urban's maximum liability therefor.

Urban shall not be deemed to be in default hereunder if the Plan or the Building Study has not been approved (as herein defined) or if, Urban having acted in good faith, it is unable to proceed due to causes beyond Urban's reasonable control, such as, but without limitation, governmental regulation of construction or credit which would impede Urban's development, national emergency or natural catastrophe. In any case where the Authority is not entitled to retain such Deposit under the terms of this Letter, and where Urban's further obligations shall have ended, the Authority shall return such Deposit to Urban after deducting any unpaid expenses that are the responsibility of Urban.

It is recognized that Urban's obligations are premised upon approval of the Plan, the Building Study, the development of the BUA Development Site as herein contemplated, and the particular terms and provisions herein indicated, and without any further conditions. In the event that additional requirements or conditions that materially affect Urban are at any time imposed by the Department or any public agency or body, as part of its approval, by rule or regulation or otherwise, Urban shall be entitled, at its election, to terminate its obligations hereunder and to recover its Deposit in full without being deemed to be in default, and in such event, the Authority may rescind Urban's designation as redeveloper of the BUA Development Site.

Notwithstanding anything to the contrary contained herein, upon the rescission of Urban's designation as redeveloper of any Subparcel in accordance with this Section 6.7, the Authority may designate a substitute redeveloper for any such Subparcel.

Section 6.8. Works of Art

The Land Disposition Agreement shall provide for the expenditure of funds by Urban in the cause of development

for works of art. Payments made to the Authority under Section 6.5(a) of this Letter shall be considered as part performance of the 1% art requirement of the Plan and the Land Disposition Agreement.

If the foregoing accurately states our agreement and the basis upon which the Authority and Urban agree to proceed, would you please so indicate by accepting this Letter by appropriate acknowledgment thereof.

Very truly yours,

BOSTON URBAN ASSOCIATES

By Mortimer B. Zuckerman

By Edward H. Linde

ACCEPTED AND ACKNOWLEDGED:

BOSTON REDEVELOPMENT AUTHORITY

By Robert T. Kenney, Director

